

ATTACHMENT A Remarks

Claims 1-6, 8-11 and 14-19 stand pending in the present application. By this Amendment, Applicants have amended claim 14. Applicants respectfully submit that the present application is in condition for allowance based on the discussion which follows.

Claims 14 and 15 were rejected under 35 U.S.C. § 112, second paragraph, alleging that the actuators purpose or manner of use was not clearly defined in claim 14. By this Amendment, Applicants have amended claim 14 to now recite a tab actuator portion which further defines the purpose of the previously recited actuator portion. Applicants respectfully submit that as currently recited, claim 14 now more clearly recites the purpose and manner of use of the actuator, i.e., namely the purpose being to actuate the tab. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection to claims 14 and 15 under 35 U.S.C. § 112, second paragraph.

Claims 1, 2, 4-6, 9-11 and 14-19 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Polo in view of Pettersen. The Examiner alleges that Polo teaches the claimed container except for a tab extending less than 90° or 180° around the top surface of the container. The Examiner attempts to make up the deficiencies of Polo by alleging that Pettersen teaches that it is known to provide a hinged tab having a depressable actuator on a container where the tab extends less than 180° and less than 90° around the container body.

Contrary to the Examiner's allegation, the present dispenser is not obvious from Polo in view of Pettersen. The individual and, *arguendo*, combined teaching of Polo in view of Pettersen fails to teach or suggest all claimed elements. Moreover, it is

inappropriate to combine the teachings of Polo with Pettersen as there fails to be any teaching or suggestion to motivate one of ordinary skill in the art to combine the two references with one another to make the claimed invention obvious.

The *arguendo* combined teachings of Polo and Pettersen fail to teach or suggest the claimed dispenser which recites, in part, a toroidal-shaped body having a tab portion which extends circumferentially around a distance less than 90° (claim 1) or less than 180° (claim 6). On the contrary, neither Polo nor Pettersen teaches or suggests a tab which extends circumferentially less than 180°. Polo clearly teaches a tab which extends 180°. Pettersen clearly teaches a tab which extends radially across the top of a cylindrical container bottle. Pettersen fails to teach or suggest a tab which extends circumferentially let alone circumferentially less than 180°.

Moreover, there fails to be any teaching or suggestion in Polo or Pettersen to motivate one of ordinary skill in the art to modify the Polo tab which extends circumferentially 180° around a top surface of the Polo toroidal-shaped body to use the radially extending tab of Pettersen.

Furthermore, even if one were to combine the teaching of Polo with Pettersen, Pettersen fails to teach or suggest how one of ordinary skill in the art would fashion a radially extending tab which extends radially across the top surface of a cylindrically-shaped bottle or container to form a circumferentially extending tab as claimed. On the contrary, if one were to combine the teaching of Pettersen with Polo as alleged, one would have a radially extending tab traversing the diameter of a toroidal-shaped body and thus not form the claimed toroidal-shaped body with a tab which extends circumferentially less than 180° around a top surface of the body.

Based on the foregoing discussion, Applicants respectfully request that the Examiner withdraw the rejection to claims 1, 2, 4-6, 9-11 and 14-19 under 35 U.S.C. § 103(a) as being unpatentable over Polo in view of Pettersen.

Claims 16, 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen and optionally, further in view of Polo. The Examiner alleges that Chen teaches a container having an outer wall and an inner wall forming a hollow body and a tab which uncovers an aperture in the hollow body. The Examiner does admit that Chen is not a true toroidal-shaped body, but the Examiner alleges that it would have been obvious to modify the shape to form the claimed toroidal-shaped body.

Contrary to the Examiner's allegation, claims 16, 18 and 19 are not obvious in view of Chen as Chen fails to teach or suggest the claimed toroidal container having a tab which extends less than 180° around the top of the container. Chen fails to teach or suggest a tab portion which extends around the top of the container less than 180°. Chen clearly teaches tabs which are hinged to an outer circumference portion of a heptagon-shaped toolbox. The tabs then extend radially inward towards the center of the toolbox. Chen fails to teach or suggest a tab which extends around the container, let alone extending around the container less than 180°. Moreover, since Chen is a design patent which is limited to its ornamental design, the breadth of the disclosure is construed narrowly to that ornamental design. Therefore, it would not be obvious to modify the heptagonal-shaped toolbox to form a toroid shape as was alleged. And while the Examiner acknowledges that rounded, smooth shaped containers exist in the art by citing to Polo, there fails to be any teaching, suggestion or motivation for one of ordinary skill in the art to modify Chen to form a toroid-shaped body. Absent such

motivation, it is inappropriate to apply Chen to reject claims 16, 18 and 19 under 35 U.S.C. § 103(a).

Based on the foregoing, Applicants respectfully request that the rejection to claims 16, 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Chen and optionally further in view of Polo be withdrawn.

Applicants gratefully appreciate the Examiner's indication of allowable subject matter of claims 3 and 8. By this Amendment, Applicants respectfully submit that all claims are in condition for allowance.

END REMARKS